

1 TUCKER ELLIS LLP
2 Su-Lyn Combs - SBN 209834
3 su-lyn.combs@tuckerellis.com
4 Joshua J. Wes - SBN 238541
5 joshua.wes@tuckerellis.com
6 Aggie B. Lee - SBN 228332
7 aggie.lee@tuckerellis.com
8 515 South Flower Street
9 Forty-Second Floor
10 Los Angeles, CA 90071
11 Telephone: 213.430.3400
12 Facsimile: 213.430.3409

13 Attorneys for Defendants
14 JOHNSON & JOHNSON, and
15 ETHICON, INC.

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 FRIEDA SHAHBAZ, and
19 CYRUS SHAHBAZ,

Plaintiffs,

v.

JOHNSON & JOHNSON, et al.

Defendants.

) Case No. 2:13-cv-07382-AB-SS
}) **DEFENDANTS' NOTICE OF**
}) **MOTION TO STRIKE MAY 29, 2020**
}) **"SUPPLEMENTAL" REPORT OF DR.**
}) **JA-HONG KIM**
}) *[Filed concurrently with Declaration of
Su-Lyn Combs, Memorandum of Points
and Authorities; and [Proposed] Order]*
}) Date: July 17, 2020
}) Time: 10:00 a.m.
}) Ctrm: 7B

20 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

21 **PLEASE TAKE NOTICE** that on July 17, 2020 at 10:00 a.m., or as soon
22 thereafter as the matter may be heard, in Courtroom 7B of the above-entitled court
23 located at 350 West First Street, Los Angeles, CA 90012, Defendants Ethicon, Inc. and
24 Johnson & Johnson (collectively, "Ethicon"), pursuant to Federal Rule of Civil
25 Procedure 16, 26, and 37(c) and the Court's Order re Status Report, Doc. No. 26, will
26 and hereby do move for the Court to strike Plaintiffs' May 29, 2020 "Supplemental"
27 Report of Dr. Ja-Hong Kim, Doc. No. 36-1, filed concurrently with Plaintiffs' Response
28 in Opposition to Defendants' Supplemental Motion for Summary Judgment, Doc. No.

1 36. In support of this motion, Ethicon states:

2 1. Plaintiffs' untimely "supplemental" Expert Report should be stricken,
3 pursuant to Fed. R. Civ. P. 37(c), because it is prejudicial to Ethicon to permit Plaintiffs
4 to provide additional, previously undisclosed opinions, tailored to respond to Ethicon's
5 legal arguments at the summary judgment stage.

6 2. Dr. Kim's "supplemental" Expert Report is not proper supplementation
7 under Fed. R. Civ. P. 26(e).

8 This Motion to Strike is based on this Notice and Motion, the accompanying
9 Memorandum of Points and Authorities, the Declaration of Su-Lyn Combs and exhibits
10 thereto, the pleadings and papers on file, and upon such other matters as may be
11 presented to the Court at the time of hearing.

12 This motion is made following the conference of counsel pursuant to L.R. 7-3
13 which took place on June 9, 2020.

14
15 DATED: June 18, 2020

TUCKER ELLIS LLP

16
17 By: /s/ Su-Lyn Combs

18 Su-Lyn Combs
19 Joshua J. Wes
20 Aggie B. Lee

21 Attorneys for Defendants
22 JOHNSON & JOHNSON, and
23 ETHICON, INC.

1 **CERTIFICATE OF SERVICE**
2

3 *Frieda Shahbaz, et al. v. Johnson & Johnson, et al.*

4 I declare that I am a citizen of the United States and a resident of Los Angeles,
5 California or employed in the County of Los Angeles, State of California. I am over the
6 age of 18 and not a party to the within action. My business address is Tucker Ellis LLP,
7 515 South Flower Street, Forty-Second Floor, Los Angeles, California 90071-2223.

8 On **June 18, 2020**, I served the following: **DEFENDANTS' NOTICE OF**
9 **MOTION TO STRIKE MAY 29, 2020 "SUPPLEMENTAL" REPORT OF DR.**
10 **JA-HONG KIM** on the interested parties in this action by:

11 (X) **ELECTRONICALLY VIA ECF:** the above-entitled document to be served
12 electronically through the United States District Court, Central District ECF
13 website, addressed to all parties appearing on the Court's ECF service list. A
14 copy of the "Filing Receipt" page will be maintained with the original document
15 in our office.

16 () **BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope(s)
17 addressed as above, and placing each for collection and mailing on the below
18 indicated day following the ordinary business practices at Tucker Ellis LLP. I
19 certify I am familiar with the ordinary business practices of my place of
20 employment with regard to collection for mailing with the United States Postal
21 Service. I am aware that on motion of the party served, service is presumed
22 invalid if postal cancellation date or postage meter date is more than one day after
23 date of deposit or mailing affidavit.

24 (X) I declare that I am employed in the office of the Bar of this Court at whose
25 direction the service was made.

26 Executed on **June 18, 2020**, at Los Angeles, California

27
28 */s/ Stella S. Villegas*
29 Stella S. Villegas